RECORD AND BRIEFS.

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In the Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.; AND JACK C. PHILLIPS,
Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION;
CHARLIE CRAIG; AND DAVID MULLINS,
Respondents.

On Writ of Certiorari to the Court of Appeals of Colorado

BRIEF FOR AARON AND MELISSA KLEIN AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether applying Colorado's public-accommodation law to compel artists to create expression that violates their sincerely held religious beliefs about marriage violates the Free Speech or Free Exercise Clauses of the First Amendment.

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INTEREST OF *AMICI CURIAE*[1]

In 2007, *Amici Curiae* Aaron and Melissa Klein and their family opened a storefront bakery in Gresham, Oregon, called "Sweet Cakes by Melissa." Six years later, after they declined to create a custom-designed cake celebrating a same-sex wedding because their sincere religious beliefs prohibit them from doing so, the Oregon Bureau of Labor and Industries imposed a financially devastating penalty of $135,000 against the Kleins and imposed a gag order forbidding them from discussing their views on standing for their faith in this situation.[2] The penalty forced the Kleins to shut down their family bakery, which they had worked for years to build. The Kleins appealed the decision to the Oregon Court of Appeals, where their case is currently awaiting decision.[3]

This Court's decision in *Masterpiece Cakeshop* v. *Colorado Civil Rights Commission* will determine whether the government can force individuals like Aaron and Melissa to choose between practicing their

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[1] All parties have consented to the filing of this brief, either by blanket consent filed with the Clerk or individual consent to *amici*. No party's counsel authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution intended to fund its preparation or submission.

[2] This $135,000 financial exaction was actually styled as monetary damages for declining to bake a wedding cake and the emotional toll that the declination allegedly had upon the same-sex couple in question.

[3] *Klein v. Or. Bureau of Labor & Indus.*, No. CA A15899 (Or. Ct. App. argued Mar. 2, 2017).

livelihoods and violating their consciences. Because the First Amendment does not permit the government to force such a choice upon individuals like the Kleins, the judgment should be reversed.

SUMMARY OF ARGUMENT

A marriage is of "transcendent importance" to a couple: it creates a permanent bond that brings together two people, their families, and the surrounding community. *Obergefell* v. *Hodges*, 135 S. Ct. 2584, 2594 (2015). The wedding is the quintessential expression of that important union. A couple's wedding is therefore an intrinsically expressive event—conveying "important messages about the couple, their beliefs, and their relationship to each other and to their community." *Kaahumanu v. Hawaii*, 682 F.3d 789, 799 (9th Cir. 2012). Each aspect of and participant in this event contributes to that message: the venue, the celebrant, the music, the flowers, the photography—and the wedding cake. Participating in a wedding—even by mere attendance—is an expressive message communicating support and approval for a marriage, a message that is squarely protected by the First Amendment. Indeed, those who support same-sex marriage plainly understand this, as they proudly attend, support, and contribute their talents to same-sex wedding ceremonies.

But this freedom extends both ways. Those who support same-sex marriage hold an unquestioned First Amendment right to support those weddings, whether by attending, performing wedding ceremonies, or plying their craft in support of such a marriage—such as the bakers who design a cake celebrating the union

of a same-sex couple. But those who oppose same-sex marriage enjoy equal First Amendment rights *not* to express such support, even when such support is recharacterized as an anodyne "public accommodations" law. The First Amendment entitles Jack Phillips, like every other American, to refrain from supporting same-sex marriages per his "decent and honorable" beliefs, *Obergefell*, 135 S. Ct. at 2602, and this Court's compelled-speech doctrine holds that Colorado's efforts to compel Phillips's support violates the First Amendment in a fundamental way. But no less a violation is Colorado's persistent viewpoint discrimination between those who support same-sex marriage, like several Colorado bakers permitted to refuse orders designed to oppose same-sex marriages, and Phillips, who wishes the same latitude to refuse orders that support them.

This brief focuses on the importance of the right that Jack Phillips holds along with millions of Americans: the right not to be compelled by force of law to abandon his decent and honorable belief opposing same-sex marriage. If permitted to stand, the coercive exercise of authoritarian power below threatens to quash dissent not only on debates regarding marriage, but also on all hotly contested issues of public concern. Without the power to dissent, millions of Americans could be put to the intolerable choice of forfeiting their professional lives or betraying their consciences. The First Amendment does not tolerate the government's putting anyone to such a choice.

Amici know just how intolerable it is. Oregon's imposition of a financially devastating $135,000 fine

under the auspices of "damages" due to the mental and emotional distress felt by a same-sex couple[4]—plus a gag order—for Aaron and Melissa's refusal to create a custom-designed wedding cake for a same-sex marriage ceremony forced them to close their family-owned business. *Amici* therefore also focus in this brief on the human cost when the government arrogates to itself the power to suppress dissenting ideas.

ARGUMENT

I. THE FIRST AMENDMENT PROTECTS THE RIGHT NOT TO EXPRESS SUPPORT FOR SAME-SEX MARRIAGE.

A wedding cake communicates a First-Amendment-protected message of support for a wedding because *everything* in a wedding, including attendance, communicates a protected message. Few aspects of life are so thoroughly ritualized and so uniquely expressive as a wedding, where one cannot participate in any manner without sending a message—typically of support and celebration. Phillips and *amici* seek the First Amendment protection that anyone would enjoy in any other context: the right not to communicate such a message against their will. Colorado seeks to compel participation in same-sex weddings, and thus to compel a message of support for same-sex marriage. The First Amendment denies Colorado the power to coerce such support. Likewise, the Constitution protects Aaron and Melissa Klein, bakers in Oregon who are being prosecuted by Oregon for allegedly violating the State's public-accommodation law, OR.

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[4] *See supra* note 2.

REV. STAT. § 659A.403.[5] The Kleins' case was argued before the Oregon Court of Appeals on March 2, 2017, and is awaiting a decision from that court.[6]

A. Weddings Are Expressive Ceremonies Protected By The First Amendment.

A wedding is an expressive event, with nearly every component suffused with centuries of tradition and the participants' place in that tradition. Each detail—from the venue, to the garments, to the celebrant, to the cake—contributes to the wedding's message, both in support for the happy couple and in relation to centuries of tradition. Every aspect of a wedding contains symbolic significance, and thus each component, itself a symbolic expression, is protected by the First Amendment.

The First Amendment protects not only speech, but symbols, for "symbolism is a[n] . . . effective way of communicating ideas." *W. Va. State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 632 (1943). An object, service, event, action, or graphical representation becomes a symbol precisely when it is well associated with one or a handful of meanings, and thus is associated with one or more ideas. Howard M. Wasserman, *Symbolic Counter-Speech*, 12 WM. & MARY BILL RTS. J. 367, 390–91 (2004). The American flag is a symbol of the

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[5] Although this is a civil legal action initiated by a regulatory agency, Oregon refers to such a legal action as a prosecution, and its coercive character bears some of the punitive aspects typically seen in a criminal proceeding.

[6] *See generally Klein* v. *Or. Bureau of Labor & Indus.*, No. CA A15899 (Or. Ct. App. argued Mar. 2, 2017).

United States; red roses are a symbol of romantic love; a Latin cross is a symbol of the Christian faith. Each is associated with a corresponding idea; the use of each is protected by the First Amendment.

So too with weddings. Aside from its role in enabling the fundamental right to marry, *Loving* v. *Virginia*, 388 U.S. 1, 12 (1967), a wedding is itself a symbol fully protected by the First Amendment. A wedding "offer[s] symbolic recognition" of a couple's union, *Obergefell*, 135 S. Ct. at 2601, where "a couple vows to support each other," while "society pledge[s] to support the couple." *Ibid.* Any wedding thus "convey[s] important messages about the couple, their beliefs, and their relationship to each other and to their community." *Kaahumanu*, 682 F.3d at 799.

Secular couples frequently "marr[y] in non-religious ceremonies that reflect their beliefs and personal commitments," and religious couples likewise "express their religious commitments and values in their wedding ceremony." *Id.* A wedding held outdoors can mean something different than a wedding in a church, which can differ from a wedding at City Hall. A couple expresses a different meaning in being married by a priest than by a judge or by a friend. A rainbow flag wedding cake expresses a different meaning than a three-tiered traditional white wedding cake. The symbols inherent in a wedding are nearly endless, and each is protected expression under the First Amendment. *Id.*

In this, weddings are akin to—though even more expressive than—many other religious ceremonies, or even parades. *See Hurley* v. *Irish-American Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 568

(1995) (describing participation in parade as inherently expressive); *S. Or. Barter Fair v. Jackson Cnty.*, 372 F.3d 1128, 1135 (9th Cir. 2004) (observing that "religious ceremonies" are expressive). Just as parades are not merely groups of people "march[ing] from here to there," *Hurley*, 515 U.S. at 568, weddings are not merely assemblies of guests, food, and statements. *See Obergefell*, 135 S. Ct. at 2593 (noting that marriage can "define and express [a couple's] identity"). Each is fully protected by the First Amendment, among other rights. *See Loving*, 388 U.S. at 12.

In short, a wedding, like other concerted ceremonial expressions, is at minimum expressive activity, participation in which is protected by the First Amendment. These concerted activities enjoy the same protection as the expressive activities of individuals. After all, "a private speaker does not forfeit constitutional protection simply by combining multifarious voices, or by failing to edit their themes to isolate an exact message as the exclusive subject matter of the speech." *Hurley*, 515 U.S. at 569. Nor is it of any moment that the participants' activities are typically directed by the couple; the transmission of the couple's message is, in any event, protected First Amendment activity, *Turner Broadcasting Sys., Inc.* v. *FCC*, 512 U.S. 622, 636 (1994), and the decision to participate in the wedding is, standing alone, a protected, expressive act. *Hurley*, 515 U.S. at 569–70. No less than a parade, a wedding combines multiple communicative expressions into a single expressive ceremony: both the ceremony, witnessed by all, and each component, provided by one, are protected First Amendment expressions.

B. The First Amendment Protects The Right Not To Be Compelled To Contribute To Expressive Events.

The First Amendment does not merely protect those who speak. It equally protects the right *not* to speak. *Barnette*, 319 U.S. at 642. If those who support same-sex marriage engage in protected First Amendment expressions by attending, celebrating, and providing services for same-sex marriages, those who elect not to do so enjoy the same First Amendment right *not* to communicate these messages. Colorado and similar States seek to compel this message of support—and thus to compel speech in violation of the First Amendment.

The Free Speech Clause's core protection against compelled speech guarantees that government may not require individuals like Phillips or *amici* to "affirm in one breath that which they deny in the next." *Pac. Gas & Elec. Co.* v. *Pub. Util. Comm'n of Cal.*, 475 U.S. 1, 16 (1986) (plurality opinion). Thus the government cannot "compel the endorsement of ideas that it approves," *Knox v. SEIU, Local 1000*, 567 U.S. 298, 309 (2012), or require individuals to repeat the government's message or symbolically express it, through art, public demonstration, or otherwise. *Hurley*, 515 U.S. at 569.

These rights are most vital when "individuals" wish "to hold a point of view different from the majority and to refuse to foster . . . an idea they find morally objectionable." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). This guarantee protects not only personal liberty, but also personal integrity. Every individual is entitled to his own "freedom of mind" and to "avoid becoming a courier" for communicating speech that

conflicts with her moral, political, or religious beliefs. *Id.* at 714, 717.[7] It likewise promotes the "open and searching debate" through which citizens attempt to convince each other of their positions on sensitive social issues such as same-sex marriage. *Obergefell*, 135 S. Ct. at 2607. The First Amendment's prohibition on compelled speech is therefore the obverse of its prohibition on banning speech: the government may not compel speech that it cannot prohibit. *United Foods*, 533 U.S. at 410–11. If government cannot *prohibit* expressive contributions to weddings, it cannot *demand* them either. *Barnette*, 319 U.S. at 642. The First Amendment guarantees "that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Agency for Int'l Dev.* v. *All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2327 (2013).

C. Wedding Cakes Always Convey A Message About The Wedding.

Even if weddings were somehow less symbolic than, say, parades, requiring bakers to make cakes for weddings to which they are opposed undoubtedly compels bakers' symbolic speech. The First Amendment protects as speech a variety of visual and audial media well beyond the written or spoken word. *Hurley*, 515 U.S. at 569. It protects all "pictures,

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[7] The First Amendment right to silence is so vital that this Court has concluded that the First Amendment prohibits requiring even financial contributions to speech with which a speaker disagrees. *Johanns* v. *Livestock Mktg. Ass'n*, 544 U.S. 550, 557–58 (2005); *United States v. United Foods*, 533 U.S. 405, 411, 413 (2001) (citing *Glickman v. Wileman Bros. & Elliott*, 521 U.S. 457, 471 (1997)).

paintings, drawings, and engravings," *Kaplan* v. *California*, 413 U.S. 115, 119 (1973), along with all auditory expressions, whether typically understood as music, and whether accompanied by lyrics or not, *Hurley*, 515 U.S. at 569. The Free Speech Clause protects even video games. *Brown* v. *Entm't Merchs. Ass'n*, 564 U.S. 786, 790 (2011). "[E]sthetic and moral judgments" about what qualifies as "art and literature . . . are for the individual to make, not for the Government to decree." *United States* v. *Playboy Entm't Grp., Inc.*, 529 U.S. 803, 818 (2000).

Custom-designed wedding cakes are individualized creations, typically made through consultation between the couple and the baker, who creates the cake to express the vision and message that the couple wishes to convey, along with the baker's own perceptions and expressions of support for the couple and their wedding. This collaborative creative activity is akin to a commissioned artwork, where both client and artist are engaged in expressive activity. *Anderson* v. *City of Hermosa Beach*, 621 F.3d 1051, 1062 (9th Cir. 2010). While both "contribute to the creative process," in which "the customer has [the] ultimate control over which design she wants," and the artist "provide[s] a service," the result is no less an expression by the creator, "because there is no dispute that the [commissioned artist] applies his creative talents as well." *Ibid.*

When a baker creates a custom cake for a wedding, she necessarily communicates a message of support for that wedding. The Kleins' faith teaches that God instituted marriage as the sacred union of one man and one woman that mirrors the union between Jesus

Christ and his church on earth. Petitioners' Brief, Excerpt of Record ("E.R.") 365–67, 373–76, *Klein*, No. CA A15899 (Or. Ct. App. Apr. 25, 2016). Consistent with their sincerely held religious beliefs, the Kleins do not believe that other types of interpersonal unions are marriages, and they believe it is sinful to celebrate them as such. *Ibid.* Indeed, the Kleins created wedding cakes, in part, because they wanted to support celebrations of what their millennia-old faith views as sacred unions between one man and one woman. *Ibid.*

So too with bakers who support same-sex marriage and likewise understand that wedding cakes communicate a clear, identifiable message of support for same-sex marriage. For example, when the Kleins declined to create a cake to support a same-sex wedding, several bakers stepped in to do so. They described themselves as artists and expressed deep pride in their ability to contribute a powerful symbol to the couple's same-sex wedding. One baker, Laura Widener, created an intricate, multiple tiered, peacock-themed cake for the wedding. *Id.* at E.R. 18–19. The peacock's feathers streamed down each tier, flaring out wider as they reached the cake's foundation; Widener hand-made and hand-painted each individual peacock feather. *Ibid.*

Widener testified about her experience as a witness for the Oregon Bureau of Labor and Industries in its proceedings against the Kleins—highlighting her understanding that her contribution as a baker and artist significantly contributed to the wedding in an expressive manner:

> Q. So you felt that your cake was part of the celebration?
> A. Oh, yeah.
> Q. It was a big part of the celebration?
> A. *Any cake is.* It's either—when someone is designing their wedding, it's dress and then cake. So, yeah, it's a *big part* in *any* wedding celebration.[8]

Expressing her pride in her expression of support for the same-sex couple, she continued:

> Cakes are an artistic expression for me. And, as an artist, you want to be able to share that with the public and the community. And this was one of my artistic creations, and I wanted to share it with the public.[9]

Widener affirmed that she has publicly discussed her belief in the message of same-sex weddings and that she was proud to be a part of the celebration:

> It's all about the love and commitment these two people share. They want to declare that commitment in the company of their friends and family, and I'm proud that my cake will be a part of that celebration.[10]

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[8] Transcript of Record 595:1–7, *Klein*, No. CA A15899 (emphases added).

[9] *Id.* at 594:7–10.

[10] *Id.* at 594:15–25 (affirming that she had previously given this quote in an article).

A celebrity baker also contributed another cake to the couple in lieu of a traditional groom's cake. The "edible art" cake maker Duff Goldman, known for his Food Network television show *Ace of Cakes*,[11] has designed and created cakes for numerous high-profile events, including President Barack Obama's Second Inauguration.[12] He created a cake that mirrored an Irish fairy tree tattoo born by one member of the couple.[13] And he explained that his creation of the cake stemmed from his longstanding support of same-sex marriage, and his belief—which the Kleins do not share—that same-sex marriage is no different from "a straight couple getting married": "Two people who pledge to spend the rest of their lives together, that's cool. Doesn't matter who they are, if they are both girls or both guys."[14] When accepting Goldman's offer to design a second cake, the couple expressed their gratitude to "both bakeries for being a part of making [their] wedding date incredibly special." Petitioners' Brief, *supra*, E.R. 22. Both the baker and the couple understood that Goldman's cake was an expressive

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[11] Petitioners' Brief, *supra*, E.R. 22, App. 497.

[12] Betty Hallock, *Inauguration 2013: The Big Cakes of the Inaugural Balls*, L.A. TIMES (Jan. 21, 2013), http://articles.latimes.com/2013/jan/21/news/la-dd-inauguration-2013-big-cakes-at-inaugural-balls-20130121.

[13] Transcript of Record, *supra*, 356:4–16.

[14] Curtis M. Wong, *Duff Goldman, 'Ace Of Cakes' Chef, Offers To Bake Rejected Lesbian Couple's Wedding Cake For Free*, HUFFINGTON POST (Feb. 4, 2013, 5:00 PM), http://www.huffingtonpost.com/2013/02/04/duff-goldman-gay-wedding-cake-offer-oregon-lesbians_n_2617583.html.

creation—precisely the sort of material protected by the First Amendment, regardless of its medium.

Indeed, one reason the Kleins started designing wedding cakes was to celebrate the gift of marriage as the union of one man and one woman, as their faith teaches them. *Id.* at 367, 375. Melissa Klein often prays that God will bless the couple and their marriage. *Ibid.* The Kleins understand that their contributions are an important part of celebrating what their faith views as a spiritual union—and while the Kleins will serve all comers, they cannot in good conscience produce messages of support for weddings that contradict their religious beliefs. The government cannot make them, if the First Amendment is to have any meaning. Just as the government cannot *prohibit* Goldman and Widener from creating cakes expressing their support of same-sex marriage, it cannot *require* Aaron and Melissa Klein—or Jack Phillips—to do so, either. The First Amendment protects the right of Duff Goldman and Laura Widener to create cakes that express support for same-sex weddings—just as it protects the right of the Kleins and Jack Phillips *not* to create cakes that express such support. The government may not make persons choose between their deeply held beliefs and their livelihoods, no matter how it styles the attempt.

D. Colorado's Enforcement Of Its Law Unconstitutionally Discriminates Between Viewpoints On Same-Sex Marriage.

The Free Speech Clause entitles individuals to communicate or to refrain from communicating messages concerning same-sex marriage with which they disagree—but in Colorado, as in many States with

similar laws, those free-speech rights are selectively enforced. That is, in Colorado, while opponents of same-sex marriage are compelled to express *support* for same-sex weddings, supporters are permitted to decline similar requests for messages *opposing* same-sex marriages. Even if the government could force speakers to accept messages from all sides, it cannot pick favorites in doing so. This, too, violates the Free Speech clause.

As Colorado has conceded, Brief in Opposition at 11, its law excepts works containing "specific designs or messages that are offensive" to the producer. Relying on this exception, Colorado *permits* bakers to refuse orders from customers who ask them to create cakes opposing same-sex marriage. Pet. App. 305a, 314a, 323–24a. But Colorado *prohibits* bakers from refusing orders from customers who ask them to create cakes supporting same-sex marriage—even though doing so would violate their core religious beliefs. Colorado's position can only be that opposing same-sex marriage is offensive, while supporting it is not. But Colorado is no more entitled to decide what is offensive than the Patent and Trademark Office, as the First Amendment applies with equal force to each. *Matal* v. *Tam*, 137 S. Ct. 1744, 1764 (2017).

There cannot be an "open and searching debate" if a State may deem one side's beliefs offensive. Far from enabling frank and honest exchanges, Colorado's approach hardens hearts and steels resolve—and engages in invidious discrimination between viewpoints that the First Amendment prohibits.

E. Other States Like Oregon Impose Additional Restrictions on Speech.

Although Jack Phillips has thankfully not had to deal with additional forms of restriction on his free-speech rights, Aaron and Melissa Klein have learned that other States can be far more aggressive in penalizing speech on marriage that does not accord with the State-imposed orthodoxy. In addition to the $135,000 penalty recast as "damages," Oregon further punished the Kleins for discussing their religious faith on radio, and imposed a "gag order" on Aaron and Melissa not to publicly discuss their views regarding marriage in the future.

During the government's prosecution of their case, the Kleins were invited to participate in an interview on a Christian radio show to share their ordeal. Aaron and Melissa discussed their personal religious faith during this interview, and explained why it led them to decline to customize a wedding cake celebrating a same-sex marriage. *See* Petitioners' Brief, *supra*, at 14–15 (collecting various record entries). Consistent with their representations on that radio show, when Aaron and Melissa were forced to shutter their small family business, they posted a note encouraging customers and neighbors that Aaron and Melissa's religious faith was enduring through this difficult time, that the "fight is not over," and they would "continue to stand strong" in their religious beliefs. *Id.* at 15–16 (citing record entries).

In response, Oregon declared that Aaron and Melissa had violated OR. REV. STAT. § 659A.409, a statute that prohibits businesses from advertising discriminatory messages to the public. This violation

of what is essentially a signing and commercial advertising regulatory statute became the basis for a gag order. In response to the radio interview and note expressing the Kleins' sincerely held religious beliefs, Oregon enjoined Aaron and Melissa from expressing such religious beliefs in the future, ruling that such statements are the functional equivalent of a business's advertising to the public its intent to engage in illegal discrimination in the future. Petitioners' Brief, *supra*, at 16 (citing record entries).

The First Amendment does not allow the government to impose additional financial penalties for sharing religious beliefs, or to enjoin American citizens from speaking to the media about those beliefs.

II. Government Cannot Force Citizens to Choose Between Practicing Their Profession or Violating Their Conscience.

The risks to professionals from compelled-expression laws like Oregon's and Colorado's are not hypothetical. The Kleins, who hold "decent and honorable" views about marriage, *Obergefell*, 135 S. Ct. at 2602, have already been driven out of the marketplace. *Amici* urge the Court to hold that the First Amendment prevents government from imposing fines and penalties—whether characterized as "damages" or any other term—designed to exclude people with "decent and honorable beliefs" from public economic life—or the public square altogether.

Amici Aaron and Melissa Klein were penalized $135,000 for a single instance of declining to express support for a same-sex wedding—a ruinous financial penalty that destroyed a family business which had

taken years to build. For context, federal crimes punishable with a maximum similar financial exaction—though forthrightly denominated as fines or penalties, rather than "damages" from a sense of personal offense and affront—under the U.S. SENTENCING GUIDELINES MANUAL include reckless involuntary manslaughter, *id.* § 2A1.4(a)(2)(A), statutory rape, *id.* § 2A3.2(a), and domestic violence, *id.* § 2A6.2(a). The Kleins' penalty dwarfs those permitted for other serious federal crimes, such as aggravated assault, *id.* § 2A2.2(a), perjury, *id.* § 2J1.3(a), or tax evasion resulting in a tax loss of $100,000, *id.* § 2T4.1(F). States such as Oregon and Colorado are thus punishing conscientious dissenters as serious felons—an approach that is anathema to the values the Free Speech Clause protects and defends.

Advocates of same-sex marriage have also recognized the high cost of forcing individuals to choose between violating their conscience or practicing their profession. For example, Andrew Koppelman has acknowledged that "the human costs of refusing accommodation[s]" to religious objectors "are serious." Andrew Koppelman, *Gay Rights, Religious Accommodations, and the Purposes of Antidiscrimination Law*, 88 S. CAL. L. REV. 619, 652–53 (2015). As Koppelman concludes, the burden "of being refused service, even if one counts the stress, is less than the burden on" religious objectors like the Kleins "of going out of business." *Id.* at 645.

Similarly, Douglas Laycock has written that while "same-sex couples have a right to marry, and to as grand a wedding as they desire, they do not have to force religious believers in traditional marriage to host

the wedding or cater the reception."[15] He argues that small, family-owned wedding vendors should have this right. But Colorado, Oregon, and various other States will not grant even this modest accommodation as a sign of tolerance for longstanding, mainstream religious beliefs of which the State disapproves. This Court should not ignore the human cost when government steps in to stigmatize dissent and force religious objectors to choose between their beliefs and their livelihoods.

CONCLUSION

The judgment of the Court of Appeals of Colorado should be reversed.

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[15] Rachel Gross with Douglas Laycock, *Gay Rights & Religious Freedom: Can We Find Common Ground?*, MOMENT MAGAZINE (June 30, 2014), http://www.momentmag.com/gay-rights-religious-freedom-common-ground/.

Respectfully submitted,

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